

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA

R. ALEXANDER ACOSTA,
Secretary of Labor,
United States Department of Labor,

Plaintiff,

v.

HURRICANE ALLEY, LLC; DIVER DOWN,
LLC; and DAVID COLE, an Individual,

Defendants.

FILE NO. 7:16-cv-00293-D

CONSENT JUDGMENT

This Consent Judgment resolves a civil action filed in this Court by R. Alexander Acosta, Secretary of Labor, U.S. Department of Labor (hereinafter "the Secretary") to enforce the provisions of Sections 6 and 7 of the Fair Labor Standards Act of 1938, as amended (hereinafter "the FLSA" or "the Act"), 29 U.S.C. §§ 206 and 207, against Hurricane Alley, LLC, Diver Down, LLC, and David Cole. It is, therefore,

ORDERED, ADJUDGED and DECREED that Defendants Hurricane Alley, LLC, Diver Down, LLC, and David Cole (hereinafter "Defendants"), their agents, servants, employees, and all persons in active concert or participation with them who receive actual notice hereof, are permanently enjoined from violating the provisions of the FLSA in any of the following manners:

Exhibit A

1. They shall not, contrary to §§ 6 and 15(a)(2) of the Act, 29 U.S.C. §§ 206 and 215(a)(2), pay any employee who is engaged in commerce or in the production of goods for commerce, or who is employed in an enterprise engaged in commerce or in the production of goods for commerce, within the meaning of the Act, wages at a rate less than the applicable minimum hourly rate prescribed by said § 6 as now in effect or which hereafter may be made applicable by amendment thereto.

2. They shall not, contrary to §§ 7 and 15(a)(2) of the FLSA, 29 U.S.C. §§ 207 and 215(a)(2), employ any employee in commerce or in the production of goods for commerce, or in an enterprise engaged in commerce or in the production of goods for commerce, within the meaning of the Act, for more than 40 hours in a workweek unless such employee is compensated for such hours in excess of 40 at an overtime rate of at least one and one-half times the regular rate at which such employee is employed, unless such employee qualifies for an exemption from overtime pursuant the applicable provision of the statute.

IT IS FURTHER ORDERED, ADJUDGED and DECREED that:

3. Plaintiff shall recover from Defendants back wages in the total amount of \$40,000 in back wages, plus \$555.02 in interest, due employees for the periods of employment and in the amounts indicated with respect to each, as set forth on Schedule "A" attached hereto. The private rights, under the Act, of any employee of Defendants not named or for periods not stated in said Schedule "A" shall not be terminated or otherwise adversely affected by this proceeding. To comply with this provision of this Order, Defendants shall deliver to the Plaintiff separate cashier's or certified checks, or money orders payable to "Wage and Hour Division--Labor" according to the payment schedule listed on Schedule "B". Payments shall be made to:

Wage and Hour Division--Labor
U.S. Department of Labor

Wage and Hour Division
61 Forsyth Street, Room 7M40
Atlanta, GA 30303

Plaintiff, thereupon, shall distribute the proceeds of such checks, less deductions for federal income taxes and employee contributions to F.I.C.A., as required by law, to the named employees, or to their personal representatives, and any amounts not so distributed by the Plaintiff within the period of three (3) years after date of this Judgment, because of inability to locate the proper persons or because of such persons' refusals to accept such sums, shall be deposited into the Treasury of the United States as miscellaneous receipts. Defendants shall remain responsible for the employer's share of F.I.C.A. arising from or related to the back wages paid hereunder.

In the event of default of a period of 15 days or more by the Defendants in the payment of any of the above-recited installments or the installments listed on Schedule "B", the total balance then remaining unpaid shall become due and payable immediately, with no further notice or demand required, and post judgment interest shall be assessed against such remaining unpaid balance, in accordance with 28 U.S.C. § 1961, from the date hereof until paid in full.

The parties acknowledge and agree that this Consent Judgment and the parties' respective signatures on this Consent Judgment are not and shall not be construed as an admission or acknowledgement of any fault or wrongdoing of any kind on the part of Defendants.

Each party shall bear such other of its own attorney's fees and expenses incurred by such party in connection with any stage of this case, including but not limited to, attorney's fees which may be available under the Equal Access to Justice Act, as amended.

SO ORDERED. This 11 day of March 2019.

J. Dever
JAMES C. DEVER III
United States District Judge

Defendants consent to entry
of the foregoing Judgment:

HURRICANE ALLEY, LLC

By: /s/Joshua M. Krasner
JOSHUA M. KRASNER
Attorney

DATE: March 8, 2019

DIVER DOWN, LLC

By: /s/Joshua M Krasner
JOSHUA M. KRASNER
Attorney

DATE: March 8, 2019

DAVID COLE

By: /s/Joshua M. Krasner
JOSHUA M. KRASNER
Attorney

Barrett Law Offices, PLLC
5 W. Hargett Street, Suite 910
Raleigh, NC 27601
T: 919-928-5223
F: 919-999-2711
jkrasner@barrettlawoffices.com

SOL Case No. 16-00618

Plaintiff moves for entry of
the foregoing Judgment:

KATE S. O'SCANNLAIN
Solicitor of Labor

STANLEY E. KEEN
Regional Solicitor

ROBERT L. WALTER
Counsel

By: /s/Kristin R. Murphy
KRISTIN R. MURPHY

Office of the Solicitor
U. S. Department of Labor
61 Forsyth Street, S.W.
Room 7T10
Atlanta, Georgia 30303
(404) 302-5435
Murphy.kristin.r@dol.gov
ATL.FEDCOURT@dol.gov
Attorneys for Plaintiff

DATE: March 8, 2019

Schedule A to Consent Judgment

First Name	Last Name	BWs Due	Violation Begin Date	Violation End Date
CHAD	BAILEY	\$1,192.80	6/30/2014	1/11/2015
JEAN	CAITLIN	\$279.53	6/30/2014	1/11/2015
NICK	CAMPBELL	\$209.29	6/8/2014	7/6/2014
SHANE	CASELL	\$571.49	5/11/2014	12/21/2014
GIGI	CFILSEILI	\$284.47	6/30/2014	1/11/2015
JOHN	GROSS	\$1,254.81	1/12/2014	1/4/2015
BETH	HAMILTON	\$522.75	3/16/2014	5/11/2014
KEN	HAYES	\$3,842.43	4/27/2014	1/4/2015
REED	HAYES	\$180.45	3/16/2014	4/19/2014
LAUREN	MANSFIELD	\$191.70	6/30/2014	1/11/2015
BRITTANY	MATEIL	\$197.55	4/20/2014	8/3/2014
MELISA	MCINTOSH	\$801.33	3/30/2014	6/8/2014
AMBER	MICHELL	\$3,579.55	1/12/2014	1/4/2015
TREVOR	MOSS	\$221.33	3/16/2014	8/10/2014
KIRBY	MURPHY	\$1,059.16	2/2/2014	12/28/2014
MICHAEL	O'NEIL	\$19.78	5/12/2014	5/18/2014
SARA	O'ROURKE	\$1,828.78	4/20/2014	11/9/2014
NOELLE	SCOTT	\$4,085.37	5/11/2014	10/5/2014
DEX	SHORTER	\$1,288.41	1/26/2014	1/11/2015
MANDY	UTICONE	\$1,689.20	1/12/2014	12/14/2014
ANGELA	VAUGHN	\$81.60	6/30/2014	1/11/2015
BRIDGETTE	WOLF	\$157.06	11/16/2014	12/21/2014
JONHN	PULLI	\$14.87	4/21/2014	4/27/2014
NATALIE	ANDREWS	\$19.10	6/23/2014	6/29/2014
DAVE	SEATON	\$548.36	6/23/2014	1/11/2015
LAURA	LEDFORD	\$6,781.63	1/12/2014	1/4/2015
RYAN	EDMISTER	\$1,596.39	5/4/2014	10/12/2014
JEREMY	JARELL	\$946.90	6/1/2014	10/5/2014
ELIZABETH	DURA	\$5,952.15	1/12/2014	1/11/2015
SARAH	GILBERT	\$601.76	5/11/2014	8/3/2014
		\$40,000.00		

Schedule B to Consent Judgment

Payment No.	Date Due	Amount Due	Interest Due	Total Due
Initial Payment	4/15/2019	\$4,000.00	\$0	\$4,000.00
1	05/15/2019	\$1,000.00	\$1.54	\$1,001.54
2	06/15/2019	\$1,000.00	\$2.48	\$1,002.48
3	07/15/2019	\$1,000.00	\$3.74	\$1,003.74
4	08/15/2019	\$1,000.00	\$0.92	\$1,000.92
5	09/15/2019	\$1,000.00	\$5.31	\$1,005.31
6	10/15/2019	\$1,000.00	\$6.74	\$1,006.74
7	11/15/2019	\$1,000.00	\$9.85	\$1,009.85
8	12/15/2019	\$1,000.00	\$1.03	\$1,001.03
9	01/15/2020	\$1,000.00	\$12.87	\$1,012.87
10	02/15/2020	\$1,000.00	\$16.02	\$1,016.02
11	03/15/2020	\$1,000.00	\$1.47	\$1,001.47
12	04/15/2020	\$1,000.00	\$36.43	\$1,036.43
13	05/15/2020	\$1,000.00	\$2.78	\$1,002.78
14	06/15/2020	\$1,000.00	\$1.95	\$1,001.95
15	07/15/2020	\$1,000.00	\$1.12	\$1,001.12
16	08/15/2020	\$1,000.00	\$51.51	\$1,051.51
17	09/15/2020	\$1,000.00	\$2.65	\$1,002.65
18	10/15/2020	\$1,000.00	\$1.82	\$1,001.82
19	11/15/2020	\$1,000.00	\$0.98	\$1,000.98
20	12/15/2020	\$1,000.00	\$68.24	\$1,068.24
21	01/15/2021	\$1,000.00	\$2.72	\$1,002.72
22	02/15/2021	\$1,000.00	\$1.89	\$1,001.89
23	03/15/2021	\$1,000.00	\$1.06	\$1,001.06
24	04/15/2021	\$1,000.00	\$119.26	\$1,119.26
25	05/15/2021	\$1,000.00	\$4.35	\$1,004.35
26	06/15/2021	\$1,000.00	\$3.52	\$1,003.52
27	07/15/2021	\$1,000.00	\$2.68	\$1,002.68
28	08/15/2021	\$1,000.00	\$1.85	\$1,001.85
29	09/15/2021	\$1,000.00	\$1.02	\$1,001.02
30	10/15/2021	\$1,000.00	\$169.72	\$1,169.72
31	11/15/2021	\$1,000.00	\$5.00	\$1,005.00
32	12/15/2021	\$1,000.00	\$4.17	\$1,004.17
33	01/15/2022	\$1,000.00	\$3.33	\$1,003.33
34	02/15/2022	\$1,000.00	\$2.50	\$1,002.50
35	03/15/2022	\$1,000.00	\$1.67	\$1,001.67
36	04/15/2022	\$1,000.00	\$0.83	\$1,008.83
Total		\$36,000.00	\$555.02	\$40,555.02